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May 24, 2019

Via Email and First Class Mail

Mr. Christopher Neeven, Chair
Zoning Board of Appeals
Town of Sandwich
16 Jan Sebastian Drive
Sandwich, MA 02563

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MAY 24 2019

BOARD OF APPEALS

Re: The Adventure Park at Heritage Museums and Gardens, LLC
0 Pocasset Road and 0 Shawme Road, Sandwich
Special Permit Application

Dear Chairman Neeven and Members of the Board:

At the Zoning Board hearing on May 14, 2019, several comments concerned the question of whether the Adventure Park is an "amusement park" under Massachusetts law and several members of the Board raised questions as to whether the elements of the Adventure Park constitute "structures" within the meaning of the Zoning By-law. How the Commonwealth elects to regulate the Adventure Park has no direct bearing on whether the Adventure Park is a small-scale community recreation facility pursuant to the Town of Sandwich Zoning By-law. Nevertheless, the Applicant wishes to clarify its regulatory status for the Board's reference, as it is decidedly not an "Amusement Park" under the regulations of the Commonwealth or under the Zoning By-Law. The Applicant also wishes to provide additional information regarding the elements of the Adventure Park and why they are not "structures" within the meaning of the Zoning By-law.

Under Massachusetts law, an "Amusement Device" is "a fixed or portable mechanical device similar to, but not limited to ferris wheels, carousals, rock walls, euro-bungee or similar devices, inclined railways or similar devices, including inflatables, **challenge courses**, and artificial climbing structures, as well as amusement devices as defined by ASTM..." 520 CMR 5.01 (Emphasis supplied). In contrast, an "Amusement Park" is simply "a location that has 35 or more amusement devices that may be operated." 520 CMR 5.01. A "Challenge Course" is thus one Amusement Device, whereas an Amusement Park contains 35 or more Amusement Devices.

A "Challenge Course" is a "facility or facilities not located in an amusement park or carnival consisting of one or more elements that challenge participants as part of a supervised educational/recreational curriculum." 520 CMR 5.01. An "Element" is "an apparatus which may include but not be limited to, equipment designed to simulate rock climbing, beams, bridges, cable traverses, climbing walls, nets, platforms, ropes, swings, towers, or zip wires that employ fall protection systems in their operation. Elements may be installed on or in trees, poles, portable structures, buildings or be a part of a self-supporting structure." 520 CMR 5.01.

A Challenge Course is thus comprised of Elements, all of which together constitute one Amusement Device. To suggest otherwise is disingenuous. Plaintiff's counsel further suggests that each Element of a Challenge Course requires a separate Amusement Device license and notes that the Challenge Course license issued to the Adventure Park has 69 items listed. The regulations are clear that the Elements are not separate devices requiring their own licenses. For example, the regulations provide that "No Challenge Course Element shall be operated without a valid annual license issued to the individual Challenge Course." 520 CMR 5.14(1)(b)(6). The owner of a Challenge Course must "furnish proof that all individual elements that comprise the Challenge Course are insured..." 520 CMR 5.14(1)(c). The 69 items listed on the single Challenge Course license for the Adventure Park (License # MA-662) are thus the individual Elements of the Challenge Course, they are not separate Amusement Devices. The regulations are clear, a Challenge Course is licensed, an Element is not.

While a "Challenge Course" is not an "Amusement Park" it is clearly a recreation facility within the meaning of the Sandwich Zoning By-law. Although the Zoning By-law does not explicitly list challenge or ropes courses in the definition of "recreation facility," it does include "rock climbing walls" within the non-exhaustive list of examples. The Adventure Park is very similar in use to a climbing wall and, therefore, falls within the meaning of the definition. Moreover, the Commonwealth also licenses climbing walls as Amusement Devices under 520 CMR 5.00. And, as it does with the definition of a "Challenge Course," the Commonwealth regulations provide that a "Climbing Wall Facility" is a "facility not located in an amusement park or carnival..." 520 CMR 5.01. As such, these two types of recreational uses are similarly treated and defined by the Commonwealth. Finally, in its decision, the Superior Court found that Challenge Course is predominantly a recreational use. And, as described at the hearing and in the application materials submitted, the Adventure Park meets the criteria for an "Outdoor Recreation Facility" which is a type of "Recreation Facility."

The Board also queried whether the wooden platform-like Elements of the Challenge Course are "structures" within the meaning of the Zoning By-law. Each Element of the Challenge Course sits on a circle of wedges surrounding a tree. The platform-like Elements are supported by compression on the wedges, while Elements that go between trees are suspended by cables circled around the trees. None of the Elements are nailed to or screwed on to the tree. They are designed specifically not to damage the trees. Notably, the definition of "Element" in the State regulations noted above, describes each Element as "equipment" and not as a structure. Although the State definition is not binding on the Board, it may provide some guidance as to the nature of the Challenge Course elements. The method of suspending the elements is in contrast to the definition of "structure" under the Zoning By-law, which expressly anticipates attachment to something on the ground or a fixed location on the ground. Here, the Elements are not attached to the ground or anything on the ground and therefore are not structures. Further, they were not previously considered structures by the Town when the project was originally permitted.

Finally, as requested at the May 18, 2019 site visit, I enclose a graphic showing the location of the five courses which collectively make up the Adventure Park challenge course. For your convenience, each course is identified by a different color.

Thank you for your consideration of the above. I would be happy to answer any questions at the continued hearing on May 28, 2019.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Eliza Cox', with a stylized flourish at the end.

Eliza Cox

EZC:vam

cc: The Adventure Park at Heritage Museums and Gardens, LLC (w/encl.)
4499482.3

SYMBOL LEGEND



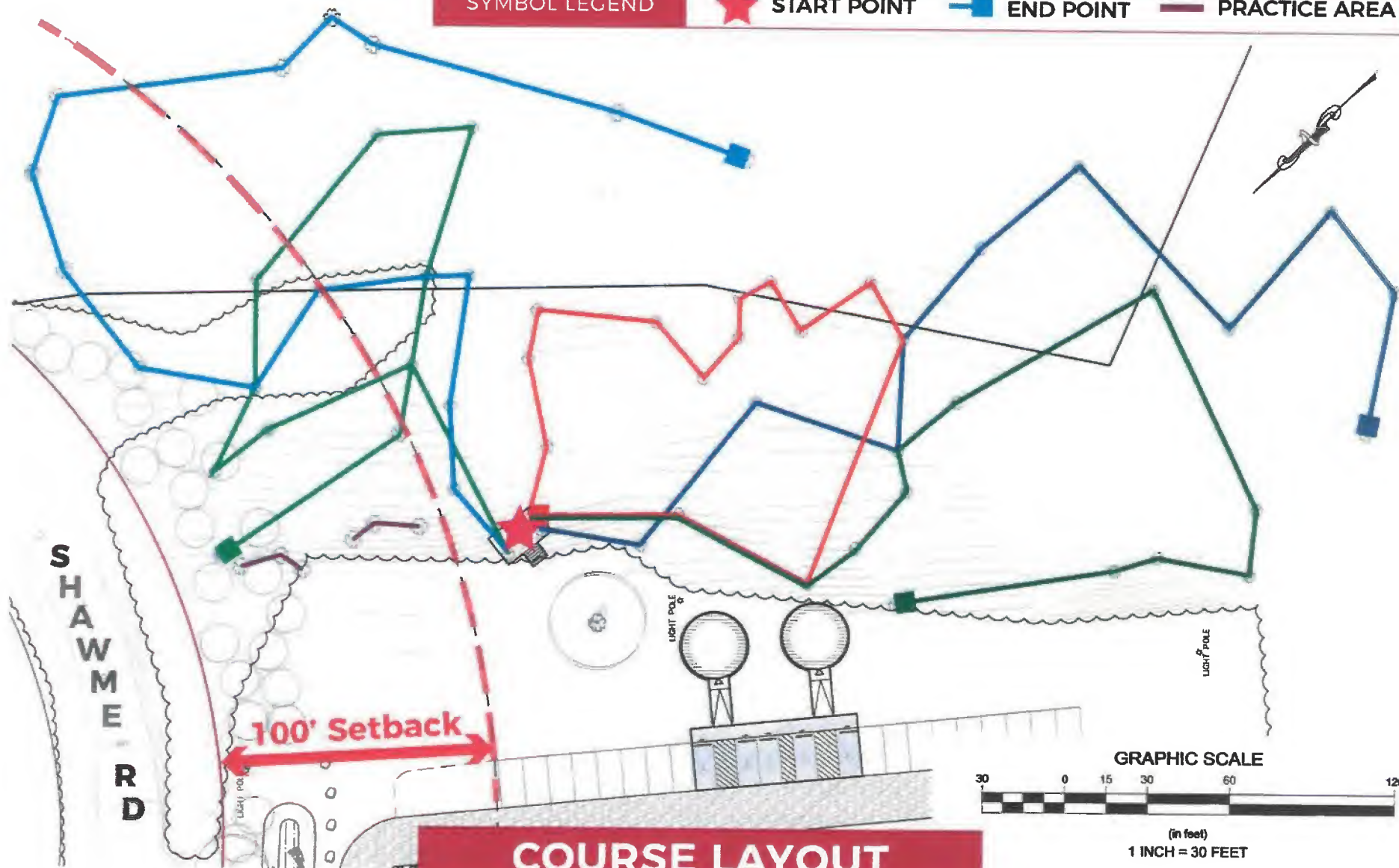
START POINT



END POINT



PRACTICE AREA



COURSE LAYOUT

GRAPHIC SCALE



(in feet)

1 INCH = 30 FEET